

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

PATRICK GROVER, #439559,

Plaintiff,

v.

TRACI LANGE, *et al.*,

Defendants.

CASE NO. 1:21-CV-252

HON. ROBERT J. JONKER

ORDER APPROVING AND ADOPTING
REPORT AND RECOMMENDATION

The Court has reviewed Magistrate Judge Green’s Report and Recommendation in this matter (ECF No. 43) and Plaintiff’s Objections (ECF No. 45). Under the Federal Rules of Civil Procedure, where, as here, a party has objected to portions of a Report and Recommendation, “[t]he district judge . . . has a duty to reject the magistrate judge’s recommendation unless, on de novo reconsideration, he or she finds it justified.” 12 WRIGHT, MILLER, & MARCUS, FEDERAL PRACTICE AND PROCEDURE, § 3070.2, at 451 (3d ed. 2014). Specifically, the Rules provide that:

The district judge must determine de novo any part of the magistrate judge’s disposition that has been properly objected to. The district judge may accept, reject, or modify the recommended disposition; receive further evidence; or return the matter to the magistrate judge with instructions.

FED. R. CIV. P. 72(b)(3). De novo review in these circumstances requires at least a review of the evidence before the Magistrate Judge. *Hill v. Duriron Co.*, 656 F.2d 1208, 1215 (6th Cir. 1981). The Court has reviewed de novo the claims and evidence presented to the Magistrate Judge; the Report and Recommendation itself; and Plaintiff’s Objections. The Court finds the Magistrate

Judge's Report and Recommendation, which recommends granting Defendants' motion for partial summary judgment (ECF No. 15), factually sound and legally correct.

The Magistrate Judge carefully and thoroughly considered the evidentiary record, the parties' arguments, and the governing law. Plaintiff's objections do not address the Report and Recommendation in a persuasive way. The Report and Recommendation recommends summary judgment dismissing claims against Defendants O'Brien, Johnson, Stone, Nalley, Morrow, and Clem for failure to exhaust. Plaintiff concedes the Magistrate Judge is correct as to Defendants O'Brien, Morrow, and Clem, (ECF No. 45, PageID.323), and he fails to create a genuine issue of material fact as to the other three Defendants. As to Defendant Lange, the Report and Recommendation recommends Plaintiff be ordered to properly move for entry of default and default judgment no later than 30 days from the date the recommendation is adopted. This is the correct and sensible way to approach Defendant Lange's failure to appear following service of process. Even though the standard CMO does not require an answer, it does require an appearance.

None of Plaintiff's objections change the fundamental analysis in this matter. Summary judgment in favor of the six Defendants is appropriate, for the very reasons the Report and Recommendation details. An order for Plaintiff to move for entry of default and default judgment against Defendant Lange within a certain time is also appropriate. If Plaintiff fails to move within 30 days of this order, dismissal with or without prejudice may be appropriate. But we may never need to cross that bridge.

ACCORDINGLY, IT IS ORDERED:

1. The Report and Recommendation of the Magistrate Judge (ECF No. 43) is **APPROVED AND ADOPTED** as the opinion of the Court.
2. Defendants' Motion for Partial Summary Judgment (ECF No. 15) is **GRANTED**.

3. Plaintiff is ordered to move for entry of default and default judgment as to Defendant Lange no later than 30 days from the date this order is entered.

4. For the same reasons that the Court dismisses Plaintiff's claims, the Court discerns no good-faith basis for an appeal within the meaning of 28 U.S.C. § 1915(a)(3). *See McGore v. Wrigglesworth*, 114 F.3d 601, 611 (6th Cir. 1997) (overruled on other grounds by *Jones v. Bock*, 549 U.S. 199 (2007)).

This case is **DISMISSED WITHOUT PREJUDICE** as to Defendants **O'Brien, Johnson, Stone, Nalley, Morrow, and Clem.**

Dated: February 16, 2022

/s/ Robert J. Jonker
ROBERT J. JONKER
CHIEF UNITED STATES DISTRICT JUDGE